



BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM
WASHINGTON, DC 20551

June 26, 2017

Emanuel J. Friedman
Chief Executive Officer
EJF Capital LLC
2107 Wilson Boulevard, Suite 410
Arlington, Virginia 22201

Dear Mr. Friedman:

This letter responds to the request dated May 23, 2016, by Trishield Special Situations Master Fund Ltd. (“Trishield”), for relief from certain of the commitments made by Trishield, Hildene Capital Management LLC (“Hildene”), and EJF Capital LLC (“EJF”) (collectively, the Covered Shareholders”) to the Board in connection with the purchase of preferred shares that were issued by First Banks, Inc. (“First Banks”), Clayton, Missouri, to the U.S. Department of the Treasury (“Treasury”) as part of the Troubled Asset Relief Program’s Capital Purchase Program (“CPP”). Trishield seeks relief from the commitments on behalf of the Covered Shareholders.

First Banks controls First Bank, Creve Coeur, Missouri, a state member bank. First Banks is controlled by a group comprised of certain members of the Dierberg family who, through several trusts established and administered by members of the Dierberg family, own 100 percent of the common stock of First Banks, as well as 100 percent of the Class A and B Preferred Shares of First Banks.¹

In December 2008, First Banks issued to Treasury \$295.4 million of Class C Preferred Stock and \$14.8 million of Class D Preferred Stock (the

¹ In addition to controlling voting shares of First Banks, the Dierberg family has three members who serve on First Banks’ 9-member board of directors, including one who serves as the chairman of the board.

“CPP Shares”).² Under the terms of the CPP Shares, if First Banks fails to pay the assigned dividend on the CPP Shares for 6 quarters or more, whether or not consecutive, the CPP shareholders become entitled to elect two directors to First Banks’ board of directors.³ First Banks suspended dividend payments on the CPP Shares beginning in August 2009, and in July 2011, Treasury accrued voting rights under the CPP Shares and elected two directors to First Banks’s board of directors.⁴

Beginning in 2013, as it proceeded to wind down and recover its investments under the CPP, Treasury sold the CPP Shares of a number of banking organizations through an auction process. In August and September 2013, through the Treasury auction process, Trishield, Hildene, and EJP each acquired a portion of the CPP Shares. Trishield controls approximately █ percent of the outstanding CPP Shares, representing █ percent of First Banks’ total equity; Hildene controls approximately █ percent of the outstanding CPP Shares, representing █ percent of First Banks’ total equity; and EJP controls approximately █ percent of the outstanding CPP Shares, representing █ percent of First Banks’ total equity.⁵

In connection with their acquisition of the CPP Shares, each Covered Shareholder committed to the Board that it would not vote the CPP Shares to select any representatives to serve on the board of directors of First Banks or any of its subsidiaries (“Nonvoting Commitment”). Each Covered

² The Class C and Class D Preferred Shares are part of the same class of securities for purposes of the Board’s Regulation Y. See 12 CFR 225.2(q)(3).

³ As with other preferred shares, the voting rights attendant to the CPP Shares allow the holders to vote as a class for directors separate from the owners of the common and other voting shares. The voting rights allow holders of CPP Shares to vote to select 2 additional directors to First Banks’ board, thereby increasing First Banks’ board from 7 to 9 members.

⁴ The CPP Shares have been considered voting shares for the purposes of the Bank Holding Company Act (“BHC Act”) since the shares gained voting rights in July 2011. The Board has long held that nonvoting preferred shares that gain voting rights as the result of the nonpayment of dividends are considered voting shares for purposes of the BHC Act for any period that the voting rights are triggered. See, e.g., 49 Federal Register 794, 800 (1984); Letter from Scott Alvarez, General Counsel, Board of Governors of the Federal Reserve System, to Joseph J. Samarias, Esq., Chief Counsel, Office of Financial Stability, Department of the Treasury (Dec. 7, 2012) (“Samarias Letter”).

⁵ Approximately █ percent of the CPP Shares is controlled by one of the Dierberg family trusts, representing █ percent of First Banks’ total equity. Ownership information is as of the February 28, 2017.

Shareholder provided the Nonvoting Commitment so that the Board would not consider its CPP Shares to be voting stock for purposes of the BHC Act.⁶ Each Covered Shareholder also provided commitments previously relied on by the Board in determining that a company did not control another company for purposes of BHC Act and the Board's Regulation Y.

Trishield requests limited relief from these commitments to permit (i) the Covered Shareholders to vote their CPP Shares to select directors on First Banks' board, (ii) Trishield to call a special meeting and solicit proxies from other holders of CPP Shares to vote to select directors to First Banks' board; and (iii) Trishield to have a single director representative on the board of First Banks, if elected by the CPP shareholders. Trishield argues that, if this request is granted, another shareholder group, the Dierberg family, would remain in absolute control of First Banks with 100 percent of the common stock, 100 percent of the Class A and B preferred shares, and control over the selection of 7 out of 9 directors.

Trishield also argues that the requested relief is consistent with Board policy regarding minority investments in banks and bank holding companies ("2008 Policy Statement").⁷ Under the BHC Act and the relevant Board policies, a shareholder may exercise the right to vote shares owned or controlled by the shareholder up to certain thresholds. In this regard, the Board has not objected to an investor exercising the right to vote up to 24.9 percent of the outstanding voting shares of a class of voting securities, or up to 14.9 percent of the outstanding voting shares of a class of voting securities where that shareholder owns in excess of 24.9 percent of the total equity of the company, absent other indicia that the shareholder can exercise or is exercising a controlling influence over the company. In this case, Trishield proposes that the Board grant Covered Shareholders relief to vote their CPP Shares. The Covered Shareholders would continue to be subject to a number of commitments typically relied on by the Board to indicate that an investor cannot exercise a controlling influence over the company.

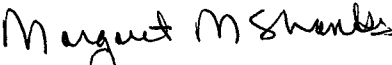
⁶ In limited circumstances, the Board has not considered preferred shares with special voting rights to be voting securities for purposes of the BHC Act where the holder of the preferred shares committed not to exercise these voting rights without prior approval of the Board. See 49 Federal Register 794, 800 (1984); Samarias Letter.

⁷ Policy Statement on equity investments in banks and bank holding companies, available at <http://www.federalreserve.gov/newsevents/press/bcreg/20080922c.htm>.

Based on all the facts of record and consistent with the 2008 Policy Statement, the Director of the Division of Supervision and Regulation, acting pursuant to authority delegated by the Board under section 265.7(a)(2) of the Board's Rules Regarding Delegation of Authority,⁸ and after consulting with the General Counsel, has approved limited relief from the commitments to permit EJF to (i) vote its CPP Shares in an amount representing no more than 14.9 percent of the voting power of the class of CPP Shares,⁹ (ii) call a special meeting and solicit proxies from other holders of CPP Shares to vote to select directors to First Banks' board; and (iii) have a single director representative on the board of First Banks, if elected by the CPP shareholders. Other than the relief described above, EJF would remain subject to a number of commitments that are designed to limit EJF's ability to exercise a controlling influence over First Banks.¹⁰

This action is based on the representations and commitments set forth in the correspondence related to this request. Any change in the facts presented could result in a different conclusion and should be reported to Board staff immediately. In particular, because transfers of shares by CPP shareholders could alter the number of CPP Shares eligible to be voted, Board staff should be consulted prior to the exercise of voting rights.

Very truly yours,


Margaret McCloskey Shanks
Deputy Secretary of the Board

⁸ 12 CFR 265.7(a)(2).

⁹ Voting power is calculated by dividing the number of CPP Shares that the Covered Shareholder is permitted to vote by the total number of CPP Shares that are eligible to be voted (i.e., the total number of CPP Shares that are not covered by the Nonvoting Commitment of one of the Covered Shareholders).

¹⁰ See supra note 7.